

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220557 **DATE:** September 27, 1985
MATTER OF: Security Engineered Machinery

DIGEST:

In "brand name or equal" procurement, "equal" product need not meet unstated features of brand name item, but only item's salient characteristics expressed in the solicitation.

Security Engineered Machinery protests the Department of the Navy's issuance of a delivery order to Fail Safe Destruction Systems for a security disintegrator for which both firms have Federal Supply Schedule (FSS) contracts under the multiple award schedule program of the General Services Administration (GSA).

We dismiss the protest.

The request for quotations (RFQ), issued on a brand name or equal basis, identified Security's Model 1012 as the brand name product and listed several salient characteristics of that product. Security quoted a price of \$12,110 for its Model 1012 while Fail Safe quoted a price of \$11,250 for its Model FS12. Award was made to Fail Safe as the low quoter.

While apparently conceding that Fail Safe's product met the listed salient characteristics, Security nevertheless argues that Fail Safe's equipment fails to meet minimum safety requirements of the Occupational Safety and Health Administration (OSHA). Security further contends that its equipment has features such as a safety chock, extended hopper, and reinforced security screen which Fail Safe's equipment does not; the protester asserts that these features are necessary for safe operation of the equipment. Security therefore concludes that the Navy improperly failed to consider the cost of modifying Fail Safe's equipment to meet safety requirements during evaluation of quotations.

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In a brand name or equal procurement, products need not meet unstated features of the brand name item, but only the item's salient characteristics expressed in the solicitation. Scanray Corp., B-215275, Sept. 17, 1984, 84-2 CPD ¶ 299. Here, the solicitation clearly informed quoters of the salient characteristics that equal equipment was required to meet. Since these characteristics did not include the safety features that Security alleges are necessary, there was no requirement that Fail Safe's equipment have those features. Furthermore, the agency could not properly consider the cost of the safety features in evaluating the quotations since the solicitation did not provide for the consideration of those costs. See Stewart & Stevenson Services, Inc., B-215899, Aug. 13, 1984, 84-2 CPD ¶ 173.

To the extent that Security is protesting that the specifications, with only the listed salient characteristics are defective or otherwise improper, Security's protest is untimely and not for consideration on the merits under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), which require that protests based upon alleged improprieties apparent on the face of the solicitation be filed prior to the initial closing date for receipt of quotations. See Workshops for Retarded Citizens, B-216787, Oct. 29, 1984, 84-2 CPD ¶ 475. Security did not file its protest until after contract award.

The protest is dismissed.

Ronald Berger

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